THE HON'BLE SRI JUSTICE J.CHELAMESWR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.2518 OF 2006

ORDER: *(Per Hon'ble Sri Justice M.Venkateswara Reddy)*

Aggrieved by the order, dated 06-01-2006, made by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'), Hyderabad in O.A.No.4434 of 2005, on its file, wherein the order of removal of the respondent herein from service, made by the petitioners herein is set aside, the present writ petition is filed.

The respondent was appointed as Junior Accountant in the year 1981. He was posted to Hyderabad Regional Office in the year 1995 and he refused to take orders on the ground that they are illegal and without authority. He was placed under suspension on 05-01-1996 on the ground that he disobeyed the orders of the head of the department.

A departmental enquiry was ordered and based on the findings of the enquiry officer, punishment of withholding of one increment with cumulative effect was imposed and he was reinstated into service, but the respondent did not join duty. He made a representation to the Director of Insurance against the orders of punishment. The said representation was rejected. He also preferred an appeal to the Government directly, instead of sending through the department concerned. After revoking the suspension, he did not join duty, but insisted that his appeal preferred to the Government should be disposed of. Recall notices issued to him proved futile. A show cause notice dated 07-02-1998 was issued to him for not joining duty. The respondent submitted a representation stating

again that the appeal should be disposed of before joining duty. In proceedings dated 11-05-1998, the Government have directed him to join duty in 7 days to consider his appeal. Then the respondent filed O.A.No.217 of 2000 on the file of the Tribunal to direct the Government to draw and pay the subsistence allowance to him from the date of suspension till the enquiry is concluded. By an order dated 17-11-2000, the Tribunal directed the respondent herein to submit non-employment certificate to the authorities and further directed that on such submission, the Government shall pay the subsistence allowance for the period of suspension as per rules. Thereafter, the respondent filed W.P.No.1036 of 2001 for certain reliefs and it was dismissed. The Writ Appeal preferred by him in W.A.No.419 of 2001 was also dismissed. He also filed an application O.A.No.2937 of 2001 for payment of subsistence allowance for post-suspension period which also ended in dismissal. Another application in O.A.No.10901 of 2002 filed by him for payment of full wages was also dismissed by the Tribunal. As against the same, he filed W.P.No.23407 of 2003 and it also ended in dismissal. At no point of time, he joined duty. Since he did not join duty, enquiry was ordered and based on the findings of the enquiry officer, he was awarded punishment of removal from service w.e.f. 01-08-1997 as per the proceedings dated 19-08-2003. Though the order of removal is dated 19-08-2003, the punishment of removal from service was awarded w.e.f. 01-08-1997 i.e., with retrospective effect. It is against the said order of removal the application in O.A.No.4434 of 2005, in which the impugned order came to be passed, was filed. The Tribunal, on the sole ground that there is no provision for removal of a Government employee for unauthorized absence with retrospective effect, allowed the application and set aside the order of removal.

The learned Government Pleader contends that the removal of the respondent even from the date of issue of order will not give any additional benefit to the respondent because he was on unauthorized and willful absence from duty with effect from 01.08.1997 onwards and in any case the Tribunal ought to have set aside the orders so far as it related to the period prior to the issue of the orders of the removal and upheld the orders of the petitioners from the date of issue of the orders.

There is no denial that the respondent has been absenting from duty from 01.08.1997, instead of joining duty he turned to be a chronic litigant and in fact, he began to dictate terms to the authorities. The observations made against him by this Court in W.P.No.23407 of 2003, which run as under, would amply demonstrate how indifferent and callous the respondent is towards his duties:

> "When this Court specifically questioned the petitioner as to why he did not join duty, no plausible answer is coming on that ground. Be that as it may, once the petitioner was imposed with the punishment and was directed to join duty, it is obvious from the record that he did not join duty; and started litigating the matter. The Tribunal and this Court has been observing that he has been indulging in vexatious litigations instead of joining duty. Nothing prevented the petitioner from challenging the order of punishment by the time he filed first application O.A. No.217 of 2000 and even when the second OA was filed and the same was dismissed, he did not challenge the same. It is only in the present OA, the petitioner challenged the proceedings dated 31-7-1997 that too after five years. Under these circumstances, the Tribunal was not inclined to interfere with the matter and dismissed the OA on the ground of constructive *res judicata.* We also perused the order under challenge and we do not find any grounds to interfere with the same. We do not find any merits in the Writ Petition."

The petitioner is obviously indulging in vexatious litigation without joining duty. Discipline is foundation of any orderly state. There cannot be any doubt that the conduct of the respondent is prejudicial to the interest of functioning of the office of the 2nd petitioner and it is unsafe for the

2nd petitioner to retain the respondent in service. The respondent is habitually negligent in attending to his duties, which would have devastating effect on the administration. He is utterly lacking in devotion to duty. He is irresponsible and his continuation is certainly prejudicial to the public interest. We have little doubt that he amply deserves dismissal.

The sole ground on which the Tribunal allowed the O.A. is that there is no provision for removal of a Government employee with retrospective effect. While holding so the Tribunal set aside the order of dismissal in its entirety. It appears that the Tribunal was under the impression that the order of dismissal

cannot be split into two parts; one relating to dismissal and another relating to giving it retrospective operation and therefore, set aside the dismissal order in toto. This approach was held to be not correct by the Supreme Court long ago in ***R. Jeevaratnam v. State of Madras.*** The Apex Court held:

> **"5.** We may now notice the cases relied on by counsel for the appellant. In *Hemanta Kumar* v. *S.N. Mukherjee (1953) 58 CWN 1,* the Calcutta High Court had occasion to consider an order dated April 29, 1952 by which a civil servant had been placed under suspension with retrospective effect from January 16, 1951. While holding that the order of suspension for the period, January 16, 1951 up to April 28, 1952 was invalid and should be quashed, the Court held that the order of suspension was valid and effective as and from April 29, 1952 and this part of the order should be upheld. As a matter of fact, the validity of the suspension as from April 29, 1952 was not even questioned by counsel for the parties. Far from supporting the appellant this decision is against him on the point under consideration. In *Abdul Hamid* v. *District School Board, 24-Paranas (1957) 61 CWN 880,* the Calcutta High Court had occasion to consider an order dated April 18, 1952 discharging a teacher employed by a District School Board from service with effect from July 15, 1951, the date on which he had been arrested in connection with a pending criminal case against him. While holding that the dismissal for the period from July 15, 1951 up to April 17, 1952 was invalid, the High Court also held that the order of dismissal was entirely bad and was not effective even from April 18, 1952. The High Court observed:
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> > "It appears to me that when the real intention of the Board was to discharge the petitioner with effect from the date when he was put under arrest it is not within the jurisdiction of the Court to substitute a different intention and maintain the order of discharge in a modified form. The order must stand or fall *in toto*. In this view of the matter it appears to me that the order of discharge as passed by the Board cannot stand."
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> Our attention is drawn to similar observations in *Sudhir Ranjan Haldar* v. *State of West Bengal (AIR 1961 Cal 626, 630).* With respect, we are unable to agree with this line of reasoning. An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid and severable part of the order."

Thus, we have to confirm the finding of the Tribunal insofar as it related to the retrospective operation of the dismissal order, but set aside its order insofar as it related to the prospective operation. The order of the Tribunal is modified

accordingly making the dismissal order, dated 19.08.2003, made against the respondent herein operational from the date of passing that order i.e. 19.08.2003 only.

The Writ Petition is disposed of accordingly. No costs.

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J.CHELAMESWAR, J.

Date:16.06.2006.

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M.VENKATESWARA REDDY, J.

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